

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AEROGLOBAL CAPITAL MANAGEMENT,)
LLC, a Delaware limited liability company,)

Plaintiff,)

v.)

C.A. No. 02CV5311

CIRRUS INDUSTRIES, INC., a Delaware)
corporation, CIRRUS HOLDING COMPANY)

LIMITED, a Cayman Islands corporation,)

JURY TRIAL DEMANDED

CRESCENT CAPITAL INVESTMENTS, INC.,)

a Delaware corporation, FIRST ISLAMIC)

INVESTMENT BANK E.C., a Bahrain)

Investment Bank, ALAN L. KLAPMEIER,)

DALE E. KLAPMEIER, PETER P.)

ORDER

McDERMOTT, II, JOHN N. DYSLIN,)

MARWAN ATALLA, WILLIAM J. MIDON)

and WILLIAM C. WOOD, JR.,)

Defendants.)

_____) This matter is before the Court upon the above-named Defendants' Motion to Strike Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss. Based upon the file, arguments, and submissions of the parties, Defendants' Motion is hereby GRANTED. Plaintiff AeroGlobal Capital Management, LLC's Memorandum in Opposition to Defendants' Motion to Dismiss, served March 21, 2003, is hereby stricken from the docket.

Dated: _____

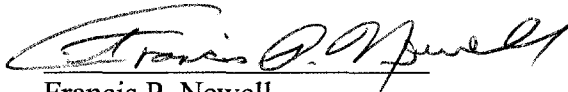
The Honorable William H. Yohn, Jr.
United States District Judge

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Plaintiff,)	
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v.)	C.A. No. 02CV5311
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a Delaware corporation, FIRST ISLAMIC)	
INVESTMENT BANK E.C., a Bahrain)	
Investment Bank, ALAN L. KLAPMEIER,)	
DALE E. KLAPMEIER, PETER P.)	DEFENDANTS' MOTION
McDERMOTT, II, JOHN N. DYSLIN,)	TO STRIKE PLAINTIFF'S
MARWAN ATALLA, WILLIAM J. MIDON)	MEMORANDUM IN OPPOSITION
and WILLIAM C. WOOD, JR.,)	TO DEFENDANTS' MOTION
)	TO DISMISS
Defendants.)	

All defendants move to strike Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss. In support of their motion, defendants rely upon their accompanying Memorandum in Support of Defendants' Motion to Strike Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss, which is incorporated herein.

Respectfully submitted,



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McDERMOTT, II, JOHN N. DYSLIN,)

MARWAN ATALLA, WILLIAM J. MIDON)

and WILLIAM C. WOOD, JR.,)

Defendants.)

**MEMORANDUM IN SUPPORT
OF DEFENDANTS' MOTION TO
STRIKE PLAINTIFF'S
MEMORANDUM IN OPPOSITION
TO DEFENDANTS' MOTION TO
DISMISS**

INTRODUCTION

The Court dismissed this case on February 27, 2003. Pursuant to Rule 60(b), AeroGlobal Capital Management, LLC ("AeroGlobal") filed a motion to vacate the dismissal order. Although that motion is pending before the Court, AeroGlobal has felt it appropriate to file Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss ("AeroGlobal's Memorandum"). In so doing, AeroGlobal ignores this Court's dismissal of the case and presumes that the Court will grant its motion to vacate. AeroGlobal's Memorandum is untimely and not appropriately before the Court. This Court should strike AeroGlobal's Memorandum from the docket.

PROCEDURAL FACTS

This motion to strike is based on the procedural posture of this case. On February 4, 2003, defendants filed a Motion to Dismiss for Lack of Personal Jurisdiction and for Improper Venue. On February 28, 2003, this Court granted the Motion to Dismiss and entered an order dismissing the Complaint without prejudice for lack of personal jurisdiction and improper venue. (Feb. 28, 2003 Order of Yohn, J. at 2). On March 10, 2003, AeroGlobal filed a Rule 60(b) motion to vacate the dismissal. Eleven days later, although the case was already dismissed and the Court had not yet ruled on the Rule 60(b) motion, AeroGlobal filed its Memorandum in Opposition to Defendants' Motion to Dismiss. AeroGlobal's Memorandum was filed on March 21, 2003, 45 days after the defendants' motion to dismiss was filed, and 22 days after this Court granted the motion and dismissed the case.

ARGUMENT

AeroGlobal's Memorandum is an improper submission and should be stricken from the docket. It is both too late and too early. AeroGlobal's response to the motion to dismiss was due February 18, 2003—fourteen days after the motion was served. *See* E.D. Pa. R. Civ. P. 7.1(c). AeroGlobal's Memorandum was clearly late and it was appropriate for the Court to rule on the motion to dismiss as it did on February 27, 2003. "In the absence of timely response, the motion may be granted as uncontested" *Id.*; *see also McNeal v. Maritank Philadelphia, Inc.*, 1999 WL 80268, at *4 (E.D. Pa. Jan. 29, 1999) (applying Rule 7.1(c) and granting motion to amend in absence of response from other party). In support of its motion to vacate, AeroGlobal has argued that it assumed that because the case was on the suspense docket, it did not have to respond. The suspense docket, however, does not alleviate a party's obligation to respond to a motion. *See* Standing Order, Civil Suspense Docket, adopted June 24, 1975, at ¶ 1.e. The Court order

removing the case from the suspense docket was entered March 4, 2003—even if AeroGlobal waited for removal of the case from the suspense docket, its response was still untimely.

Most obviously, AeroGlobal's Memorandum is moot—the Court dismissed the case 22 days before AeroGlobal's Memorandum was filed. An order striking AeroGlobal's Memorandum is appropriate because the Memorandum was filed well after the Court had already granted the motion to dismiss. *See Williams & Humbert Ltd. v. W.&H. Trade Marks (Jersey) Ltd.*, 1988 WL 66213, at *1-2 (D.D.C. June 17, 1988) (granting motion to strike plaintiff's Rule 41 notice of dismissal which was filed a month after a decision adverse to the plaintiff).

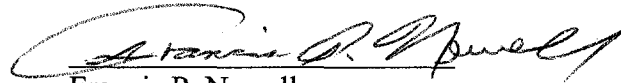
AeroGlobal's Memorandum also is inappropriate because it is too early. AeroGlobal's motion to vacate is now pending before the Court. It truly has the cart before the horse when it files its Memorandum in opposition to the motion to dismiss before the Court has ruled on the motion to vacate the dismissal. AeroGlobal's Memorandum puts defendants in an awkward position with respect to how to reply to the substantive issues raised in a Memorandum which is moot. AeroGlobal's inappropriate filing, if left alone, also has the effect of cluttering the docket and confusing the true position of the case following the Court's dismissal. Both reasons are sufficient bases for striking AeroGlobal's Memorandum. *See Sierra Foods, Inc. v. Haddon House Food Prods., Inc.*, 1992 WL 245847, at *5-6 (E.D. Pa. Sept. 22, 1992) (striking defendant's motion to dismiss the complaint which was filed subsequent to entry of default judgment and prior to disposition of the motion to reconsider the default). Thus, due to the pendency of the motion to vacate, AeroGlobal's Memorandum should be stricken from the docket as premature.

It is clear that AeroGlobal's Memorandum is not proper prior to the Court's disposition of the motion to vacate. AeroGlobal's Memorandum should be ignored and stricken from the docket in the event plaintiff seeks an appeal.

CONCLUSION

Defendants respectfully request the Court to strike Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss from the docket.

Respectfully submitted,



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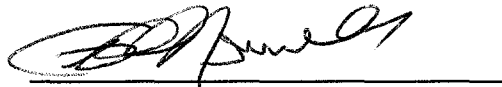
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Counsel for Defendants Marwan Atalla,
William J. Midon, and William C. Wood, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of March, 2003, I caused to be served Defendants' Motion to Strike Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss by U.S. First Class Mail, postage prepaid, upon the following:

Paul R. Rosen
Timothy C. Russell
Michael C. Wagner
Spector Gadon & Rosen, P.C.
Seven Penn Center
1635 Market Street
7th Floor
Philadelphia, PA 19103

A handwritten signature in dark ink, appearing to read "Timothy C. Russell", is written over a horizontal line.